IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1610 OF 2006
IN
SUIT NO.1395 OF 2005

Baburao H. Koli ....Plaintiff
V/s.
Chandrabhaga P. Koli & Ors. ....Defendants

Mr.K.K. Tated for the Plaintiff.

Mr.Indu Prakash i/b Mr.C.K. Tripathi for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 1ST OCTOBER, 2007.

P.C. :

1. The suit is filed for possession of the suit flat.

2. The Plaintiff and Defendant Nos.2, 3, 4 and 5 are brothers. Defendant No.6 is the mother of the Plaintiff and other Defendants.

3. The Plaintiff's case is that his father Harishchandra expired leaving behind a Will dated 9.2.1976. Under clause 5 of the said Will, the deceased bequeathed the flat to the Plaintiff.

4. The Plaintiff had applied for Letters of

Administration with the said Will annexed on 14.5.1979. By an order dated 22.1.2004 the Plaintiff was granted the Letters of Administration with the Will annexed.

5. The Defendants being aggrieved by the said order, filed an Appeal being Appeal No.565 of 2004. The said Appeal was admitted by an order dated 13.9.2004. No stay has been granted of the order dated 22.1.2004. The Plaintiff contend therefore that the Defendants including his mother - Defendant No.6 are now tres-passers in the suit flat.

6. It is pertinent to note that the plaint does not state when the Defendants entered upon the suit flat. Nor does it specify the circumstances in which the Defendants entered into the suit flat. Prima-facie, it appears that the Defendants had been residing in the suit flat as members of the family together with the Plaintiff prior to the deceased having expired. Prima-facie it cannot be stated that the entry to the suit flat over 28 years ago was unlawful.

7. The present arrangement is that the Plaintiff occupies about 30% of the flat and the Defendants

occupy about 70% of the suit.

8. Even if the Will is set-aside, the Plaintiff would be entitled to a 50% share in the said flat. In the circumstances, the Plaintiff is certainly entitled to protection of his rights, if any, in the said flat. In the facts and circumstances of this case, the ends of justice would be met by grant of an injunction restraining the Defendants from dispossessing, alienating or encumbering the suit flat. No order of dispossession by appointing a Court Receiver or otherwise is called for. It is pertinent to note that Defendant No.6, who is the widow of the deceased and other Defendants who are also children of the deceased have been residing in the said flat for almost 28 years. The Appeal is pending. Further it will have to be established at the trial that the flat belonged to the husband of the deceased and not it did not belong to the joint family.

9. In the circumstances, the Notice of Motion is made absolute in terms of prayer (b).

Hearing of the suit is expedited.